

Product Contract Terms

We reserve the right to make changes to these Product Contract Terms at any time. The current version of the Terms can be viewed at www.clearlydigital.com.au. All such changes shall be binding upon you once posted online at our website, unless those changes are material in which case they shall not take effect until the next time You sign an Order Form.

PART A: TERMS THAT APPLY TO ALL PRODUCTS

1 About these Terms

- 1.1 Each accepted Order constitutes a separate Contract for the Products covered by that Order.
- 1.2 The terms on which We supply any Products to You are:
 - a) The Terms;
 - b) The Order and any specific terms We provide to You for a Product when You place an Order;
 - c) Our current Product rules policies and Guidelines (as amended by us from time to time) are available on our website <http://www.clearlydigital.com.au/>; and
 - d) Any copy sheet, advertising instructions sheet or advertising proof.
- 1.3 If there is any inconsistency between any of the documents set out in clause 1.2, the document listed earlier prevails to the extent of the inconsistency.

2 Terms of your Contract or Product

- 2.3 Each Contract commences on the date that You sign the Order or authorise it by written, electronic or voice processes or we start supplying the Product, whichever is earlier ("Commencement Date") and will continue until the earlier of:
 - a) Completion of that Contract; or
 - b) Termination of that Contract in accordance with these Terms

3 Format and content of the Product

Fulfilling Your Content entitlements

- 3.1 We are not obligated to collect Content for You but We may do so. You are responsible for fulfilling any Content entitlements that come with a Product we supply to you.
- 3.2 You must give Us any Content for a Product by the date and in the manner We specify. We may not be able to supply a Product to You until You do so.
- 3.3 If Your Contract relates to a Clearly Digital Product, or any other Product We nominate from time to time and You do not tell Us otherwise, We may collect Content from Your Website (provided it is not Flash-based or a Facebook website) or from third parties and display that Content in the Product.
- 3.4 We are not responsible for, and You must regularly check and keep current and accurate, the Content (whether provided by You or collected by Us) in the Product that We supply to You.

Our right to reject or remove Content

- 3.5 We may at any time reject or remove any Content from a Product or change, delete, withdraw, disable or suspend a Product or any Content or any reason and without prior notice to You, including:
 - a) if provided for under the Product rules, policies and guidelines;
 - b) if We reasonably believe that the Content, or the use of it, contravenes any Law, infringes or is likely to infringe the rights of third parties or is inappropriate, unsuitable, offensive, obscene, defamatory or indecent;
 - c) if We reasonably believe that the Content, or its use, will result in a breach of Your Contract or affect Us or a Related Body Corporate unfavourably; or
 - d) in order to comply with requirements, notices, standards or instructions given to Us or a Related Body Corporate by any third party, including a regulatory body.

Presentation, classification and availability of a Product and Content

- 3.6 We may determine, control or change a Product, Your Content, or any page, site or other means of displaying the Product or Your Content, including the:
 - a) duration, nature, content, size and presentation (such as format, design, placement, order and position);
 - b) business categories, keywords and search criteria; and
 - c) availability of Products or components of Products in headings or business categories.
- 3.7 We may insert a landing page to any Hyperlinked Site.

- 3.8 End-users may access a Product and Your Content in a variety of ways (including via different sites, services and applications, technologies and devices). We cannot guarantee how a Product or Your Content will be presented to end-users or that all features of a Product or Your Content will be accessible by end-users.
- 3.9 We may use Your Content, including Your name, address and phone number, in other Products that We supply, as well as in sites and applications that We develop, from time to time. We will determine the presentation of Your Content in these Products, sites and applications.
- 3.10 If You have an Online Product, Mobile Product or other Products that We nominate from time to time:
- a) You agree that We may include in the Product We supply to You:
 - (i) links to and content from Third Party Sites or Applications that We reasonably consider to be relevant to You (such as user-generated reviews and ratings);
 - (ii) widgets, gadgets or other facilities that enable end-users to interact with Third Party Sites or Applications or with You via a Product; and
 - (iii) links to and Content from Our user-generated reviews and ratings;
 - b) You agree that to carry out these activities referred to in clause 3.10(a):
 - (i) You must provide Us with any account details (including login and password) requested by Us if You have already established accounts on Third Party Sites or Applications; and
 - (ii) We may be required to accept Third Party Terms on Your behalf and You agree to be bound by those Third Party Terms; and
 - c) We do not accept responsibility or liability for:
 - (i) any communications or transactions between You or third parties and end-users (including Our end-users) via links, widgets, gadgets or other facilities We include in a Product;
 - (ii) any content from a Third Party Site or Application or from Our websites (such as user-generated reviews and ratings) included in a Product;
 - (iii) any other uses to which end-users put the links, widgets, gadgets or other facilities We include in a Product We supply to You (for example, to create and communicate user-generated content); and
 - (iv) any loss or damage arising out of any such links, content, widgets, gadgets or other facilities for any reason.

Syndication Activities

- 3.11 You agree that We may Syndicate (as defined in clause 7.1) some or all of a Product or Your Content to Third Party Sites or Applications and sites or applications owned and/or controlled by Us, such as via an application programming interface (or API).
- 3.12 You acknowledge that a Product or Your Content may be displayed either by Us or third parties together with other content (such as user generated ratings and reviews). You agree that We are not responsible for that other content.
- 3.13 Where We Syndicate a Product or Your Content, You agree and acknowledge that We will determine:
 - (a) what part of a Product or Your Content We will Syndicate; and
 - (b) the parties to which We will Syndicate.

Retention of Content

- 3.14 When Your Contract is completed or terminated or when a Product is cancelled, We may retain or delete any Content relating to the relevant Contract or Product.

4 Payment**Your Obligation to Pay Us**

- 4.1 We may invoice You in various ways, depending on the Product. You must pay Us the Price (in Australian dollars) that applies to any Product by the due date specified on the invoice. This obligation survives completion or termination (for whatever reason) of the applicable Contract or cancellation of any Product.
- 4.2 The Price for a Product may include an additional administration fee, management fee or non-refundable set up fee.
- 4.3 You must pay Us the Price by the due date specified on the invoice for any Product You have authorised on behalf of another person, if We have been unable to collect the Price from that other person.

Failure to pay Us

- 4.4 If You do not pay Us any amount You owe Us by the due date or if any payment You have made to Us is declined or otherwise not received by Us because of insufficient funds in Your account, We may:
 - (a) charge You interest on the unpaid amounts (at the Reserve Bank's Official Cash Rate at the time the amount was due plus 5%) from the date the amount became due until it is paid in full;
 - (b) charge You any reasonable debt collection and legal costs incurred as a result of You failing to pay Us the amounts You owe to Us;
 - (c) charge You a late payment fee as set out on Your invoice;
 - (d) cancel any or all of the Products You purchase from Us; and/or charge You a dishonour fee, as notified to You by Us from time to time.

Credit card payments

- 4.5 If You pay any amount to Us by credit card, We may charge You a payment processing fee on the day You make the relevant payment at the rate set out on Your invoice, which may vary from time to time.

Direct debit terms

- 4.6 Where You have requested a direct debit arrangement, the result of any payment will be reflected against any account for the Product within five business days.
- 4.7 You consent to any increased Prices or additional charges being included in any periodic direct debit authority granted to Us.

GST on payments

- 4.8 Unless specifically stated otherwise, all amounts or fees in relation to the Products do not include any amount on account of GST.
- 4.9 Where We make a taxable supply to You and the consideration for that supply does not expressly include GST, You must also pay Us an amount equal to the GST payable by Us. Subject to first receiving a tax invoice from Us, You must pay the GST amount when You are liable to provide Us with consideration.
- 4.10 If either You or We must indemnify or reimburse each other ("Payee") for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 4.9 of these Terms if the payment is consideration for a taxable supply.
- 4.11 In these Terms:
- (a) terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended; and
 - (b) consideration includes non-monetary consideration, for which the parties must agree on a market value, acting reasonably.

5 Changes to the Terms or any Product

Changes to Contracts

- 5.1 We may change any term in Your Contract or any Product or any Price at any time.
- 5.2 We will not give You prior individual notice of changes to:
- a) these Terms that We reasonably consider are likely to benefit You, have a neutral impact on You or have a minor detrimental impact on most customers; or
 - b) the Price for a Product, if the change is by no more than CPI plus 4% in any 12 month period.
- 5.3 If We change these Terms in a way that We reasonably consider will have a minor detrimental impact on most customers, We will give You individual notice after the change has been implemented. If You can demonstrate that such a change has more than a minor detrimental impact on You, and the change is not of the type described in clause 5.5, We will allow You to cancel the affected Contract or Product without incurring cancellation fees.
- 5.4 Subject to clause 5.5, if We change these Terms or any Contract and We reasonably consider that the change is likely to have a material detrimental impact on most customers (such as where the Price increases by more than CPI plus 4%), We will give You reasonable prior written notice of the change and allow You to cancel the affected Contract or Product without incurring cancellation fees.
- 5.5 We may need to exercise Our rights in clause 5.4 on an urgent basis, for example, if there is a change in Law or because of security, fraud, technical and related issues. In such circumstances, rather than the notice period specified in clause 5.4, We will aim to give You 3 days' prior written notice of the change.

16 Contract Termination

- 6.1 You may terminate a Contract (in whole or in part) in accordance with the cancellation policy set out in *Part C*. If You terminate a contract within the Minimum Period You may need to pay a cancellation fee as set out in *Part C*. The cancellation fee payable is a genuine pre-estimate of the amount of Our loss due to termination or cancellation.
- 6.2 We may terminate a Contract (in whole or in part) or suspend or cancel one or all of Products We supply to You, and You must pay any cancellation fee set out in *Part C* for the affected Products, immediately:
- a) if You breach the terms of the Contract;
 - b) if You:
 - i. are unable to pay Your debts as they fall due, You make or commence negotiations with a view to making a general rescheduling of Your indebtedness, a general assignment, scheme of arrangement or composition with Your creditors;
 - ii. take any corporate action, or any steps are taken or legal proceedings are started, for:
 - A. Your winding up dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent; or
 - B. the appointment of a controller, receiver, administrator, official manager, trustee, or other similar officer, of You or of any of Your revenue or assets; or
 - iii. seek or are granted protection from Your creditors under any applicable legislation.
 - c) if We become unable to perform the Contract due to a force majeure event affecting either Us or Our nominees; or
 - d) but with as much warning as We reasonably can, if:
 - i. the Law requires Us to do so;

- ii. We believe on reasonable grounds that providing You with the Product is illegal or may become illegal;
 - iii. We reasonably believe that there is a real risk of loss or damage to Us or another if We do not terminate Your Contract or suspend or cancel a Product (including credit risk resulting from You not paying any fees owed to Us on time); or
 - iv. a third party directs Us to do so.
- 6.3 We may terminate a Contract (in whole or in part) or suspend or cancel one or all of Products by 30 days' written notice to You without cause (and We will refund the Price on a pro-rata basis).
- 6.4 After termination or cancellation of a Contract:
- a) We will have no obligation to refund any component of the Price (together with any GST paid), which has already been paid prior to the termination (other than as set out in these Terms);
 - b) You will not be required to pay further components of the Price to Us, other than payments which were due before termination and any cancellation fee;
 - c) We may remove the Product We supplied to You and Your Content and;
 - d) if Clearly Digital SEM Product We supplied to You has a Campaign Spend and at the date of cancellation or termination the Campaign Spend has not been spent, We will continue to provide the unused Campaign Spend until that spend is reached.

7 Intellectual Property

- 7.1 You grant Us and Our Related Bodies Corporate a royalty free licence to use, reproduce, modify, adapt, communicate to the public and sub license the Content that You provide to Us or We collect from Your Website ("Your Inputs") for the purposes of providing the Product and including the Product and the Content in any directory, product, service, site, application or marketing material provided or used by Us, by Our Related Bodies Corporate or by a third party to whom We syndicate, distribute or otherwise make available ("Syndicate") the Product or Content.
- 7.2 You agree that We or a Related Body Corporate own all intellectual property rights in:
- a) the Product other than Your Inputs; and
 - b) in any new work created by modifying, amending, adapting or otherwise dealing with any part of the Product (including Your Inputs); and
 - c) in any data, results and reports We generate, and give to You pursuant to the Terms.
- 7.3 Except in relation to Your Inputs, You must not (and must not permit others to) reproduce the Product or any new work created by Us using any part of the Product without Our prior written consent.
- 7.4 In addition to Our rights set out above, if You have a Hyperlinked Site which is a Clearly Digital Webpage, You agree that:
- a) all intellectual property rights in the design, functionality and 'look and feel' of Your Clearly Digital Webpage (except to the extent that Your Clearly Digital Webpage contains Your business names, trade marks or other pre-existing intellectual property) are owned and will be retained by Us or a Related Body Corporate;
 - b) You give Us and Our Related Bodies Corporate a perpetual, royalty free licence to use Your business names, trade marks and all other words and symbols displayed on Your Clearly Digital Webpage in any domain name that We create for Your Clearly Digital Webpage; and
 - c) We or a Related Body Corporate will own any domain name registration that We or that Related Body Corporate create for Your Clearly Digital Webpage, whether or not the URL for the domain name includes any of Your business names or trade marks.

8 Our Warranties and Limitation of Liability

- 8.1 Except for the express warranties set out in these Terms, any terms implied by law (that cannot be excluded) and Your rights under statutory guarantees provided under consumer protection laws, We provide no warranties or guarantees to You (including in relation to Our provision of a Product to You, the performance of a Product or Your return on investment in relation to a Product).
- 8.2 While We will use due care and skill in relation to the provision of the Product, neither We nor Our Related Bodies Corporate warrant or guarantee that:
- a) the Product will be free from errors or omissions or provided to You by or within a particular time; or
 - b) We will monitor Your Content to ensure that it complies with the Law or Your obligations and warranties to Us under these Terms.
- 8.3 If We fail to comply with a statutory guarantee (if it applies to You under consumer protection laws) or any term of a Contract, then We and Our Related Bodies Corporate limit Our liability for that failure (where it is fair and reasonable to do so in respect of a statutory guarantee) to either of the following (at Our option):
- a) supply of the Product again, free of charge to You; or
 - b) paying You the cost of having the Product supplied again.
- 8.4 You agree that, apart from Your rights under clauses 8.1 and 8.3 of these Terms We, Our Related Bodies Corporate and Third Party Site or Application Owners (and Representatives) will not be liable for any loss, damage, claim or demand incurred or made by any person (whether based in tort (including negligence), contract, statute or otherwise) arising out of or in connection with a Contract, including from provision of the Product, or failure to provide the Product, or from exercising any of Our rights in relation to Content.
- 8.5 Without limiting clause 8.4, We are not responsible for any loss, damage, claim or demand arising in connection with:
- a) whether a third party publishes Your Content;
 - b) how a third party displays Your Content;
 - c) the way a third party determines the relevancy of Your Content on their site or application;
 - d) any changes a third party makes to Your Content; and
 - e) any changes a third party doesn't make or delays making to Your Content.

- 8.6 Without limiting clause 8.4 of these Terms:
- a) We have no liability for any failure or delay in performing an obligation under a Contract due to matters outside Our reasonable control or to the extent it is caused by You or results from Your failure to take reasonable steps to avoid or minimise Your loss; and
 - b) We are not liable for loss or damage that was not reasonably foreseeable.

9 Your Warranties

- 9.1 You represent and warrant to Us and Our Related Bodies Corporate that:
- a) You or Your licensors own all intellectual property rights in the Content that You provide to Us or We collect from Your Website ("Your Inputs") and if You are not the owner of Your Website, You have obtained the consent of the owner of Your Website to allow Us to collect Content from Your Website and display that Content in the Product that You receive from Us;
 - b) You have the right to enter into each Contract and are the owner of, or are legally authorised to use and/or sub-licence the use of, the Content in the Products that We supply to You;
 - c) You will not purport to enter any Contract as an agent without authority from the principal;
 - d) all information You provide for the purposes of a Contract is accurate, complete and current;
 - e) You will not and will not cause our Related Bodies Corporate to breach any Contract or any of Our privacy policies or Third Party Terms that are relevant to Your Selected SEM Keywords, SEM Sponsored Listing or any other Product;
 - f) nothing in Your Content (whether supplied by You or collected by Us) in the Products that We supply to You:
 - i. contravenes any Laws, or incites or encourages breaches of any Law;
 - ii. infringes the rights (including intellectual property rights and moral rights) of any third parties;
 - iii. breaches any of Your Contracts or Your obligations to any third party (including confidentiality and privacy obligations) or Third Party Terms that are relevant to Your Selected SEM Keywords, SEM Sponsored Listing or any other Product;
 - iv. constitutes or may result in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity;
 - v. fails to meet the requirements set out in any Product rules, policies and guidelines;
 - vi. in Our reasonable opinion, otherwise prejudices or prejudice Us or Our Related Bodies Corporate's reputation or brand;
 - vii. is inappropriate, offensive, unsuitable for minors, obscene, indecent, defamatory, discriminatory, false, misleading or deceptive or likely to be misleading or deceptive, or promotes, incites or instructs in matters of crime;
 - viii. falsely represents (whether expressly or impliedly) that You have an association or affiliation with the business, products, goods or services advertised or referred to in Your Content or falsely represents that they are endorsed, sponsored, approved or associated with Us or Our Related Bodies Corporate; or
 - ix. identifies a person or can be used to identify a person (including any copy, photos or other pictorial representations), unless You have obtained that person's authority (or, if they are a minor, the consent of their parent or legal guardian);
 - g) You will monitor Your Content to ensure You comply with these warranties;
 - h) if You are required by Law to restrict access to a Product or any part of Your Content to persons with particular characteristics, You have taken all steps necessary to ensure that You comply with those requirements;
 - i) You will not engage in spamming or similar marketing activities in relation to any Product;
 - j) Your Content in the Products that We supply to You is free of "worms", "viruses" and other disabling devices;
 - k) You have all necessary rights to advertise, sell, distribute and/or communicate to others the business, products, goods or services advertised or otherwise referred to in Your Content; and
 - l) If the Product We supply to You is a Clearly Digital SEM Product, that You have a principal place of business and registered office in Australia and that You have not had an active Google Adwords account for at least 90 days before the Contract commences and that You will not obtain through Us or any other party more than one Google Adwords account.
- 9.2 Your warranties under clause 9.1 of these Terms:
- a) are given on an ongoing basis during the period of any Contract You have with Us; and
 - b) apply to any changes made to Your Content (including via video or photo sharing sites) and displayed in any Product that We supply to You.

10 Your Indemnity in favour of Us

- 10.1 You agree to indemnify Us, Our Related Bodies Corporate and Third Party Site or Application Owners (and Representatives) against all claims, demands, damages, costs, penalties, suits and liabilities of any nature caused directly or indirectly by You:
- a) act or omission or any breach by You of any provision of a Contract including the warranties given by You under clause 9.1 or Part B of these Terms; and
 - b) appointment of Us as Your agent for any purpose specified in Your Contract.

11 Confidentiality

- 11.1 All information of a confidential nature disclosed by Us to You under a Contract is and will remain confidential and must not be disclosed by You (or by Your employees, officers, advisers or contractors) to any third party, except for the purposes of the Contract. This does not apply to the extent that any such information:
- a) is already known by You, or is in Your possession;
 - b) has been lawfully obtained by You from another source;
 - c) is or becomes publicly known through no wrongful act by You; or
 - d) must be disclosed pursuant to any obligation You have at Law.

12 Privacy

- 12.1 Except for tracking tools used in relation to performance based advertising Products and authorised by Us, Your Content must not include any mechanism that enables the collection of Personal Information.
- 12.2 We may communicate with You via any method we determine including email, SMS message or fax, and those communications may not include an unsubscribe facility, unless You tell Us not to. If You do not provide Us with an email address for this purpose, We may send emails to You using any email address that appears in any Product that We supply to You, whether this email address is from Content You supply to Us or that We collect for You.
- 12.3 When We communicate with You via email:
- You are solely responsible for ensuring that Your contact details are current (including email address), Your email service is operational and that You check Your emails regularly;
 - You must promptly notify Us of any changes to Your contact details;
 - You are deemed to have received the email We have sent You and We are not obliged to take any further action to confirm that You have received, opened or read the email, unless You promptly notify Us and demonstrate that the email was not delivered to Your email address; and
 - if We receive an automated email non-delivery notification indicating You have not received the email that We have sent You, We will use reasonable endeavours to attempt to contact You using other contact details We have for You, but We do not guarantee that We will be able to contact You.

13 Other important terms

- 13.1 We may assign or novate Our rights and obligations under a Contract without Your consent. You may not assign or novate Your rights and obligations under a Contract.
- 13.2 Each Contract will be governed by the laws in force in the Australian State or Territory in which it is entered into.
- 13.3 We may use any third parties (locally or overseas) We consider fit to provide any part or all of a Product, without informing You or obtaining Your consent.
- 13.4 Each Contract constitutes the entire agreement between You and Us, and supersedes all other agreements, whether written or oral, between You and Us relating to its subject matter.
- 13.5 Failure by either You or Us to enforce any provision of a Contract is not a waiver of future enforcement of that or any other provision.
- 13.6 You must ensure that Your agents, employees or anyone else acting on Your behalf comply with Your Contract.
- 13.7 If You are acting as an advertising agency or agent:
- You must ensure Your Contracts are complied with by the advertisers or principals You represent; and
 - You remain directly liable for any breach of Your Contracts, whether by You or by any of Your advertisers or principals.
- 13.8 We may exercise a right or remedy or give or refuse consent or do or not do any act in any way We consider appropriate (including by imposing conditions) and in Our absolute discretion unless the Contract expressly states otherwise.
- 13.9 If any of the terms of a Contract are invalid, unenforceable or illegal, that term will be struck out and the remaining terms will remain in force.
- 13.10 The contract will automatically renew at the end of the term for the same amount of months each year unless notice to cancel is give 60 days prior to the end of the term. EG A 12 Month contract will renew to another 12 month contract.

PART B. PRODUCT SPECIFIC TERMS**14 Clearly Digital SEM Product specific terms**

- 14.1 We are not liable for any fraudulent Activity. Activity means a Click, form fill, email, transmission of an SMS, or any other activity that We introduce from time to time as an Activity.
- 14.2 You will be charged for Activities on the basis set out in Your Order.
- 14.3 We do not guarantee that Activities will be achieved at an approximately even rate, or within any specific period of time.
- 14.4 We may make public or disclose to third parties Your SEM Paid Ads and the amounts You bid for them. We may change bid amounts.
- 14.5 You authorise Us to purchase, place, distribute and manage Selected SEM Keywords and SEM Paid Ads with the Third Party Search Engine Owners and agree that You are bound by the Third Party Terms which apply to You as if You were the other party entering into the relevant agreement with the Third Party Search Engine Owner. However, nothing in these Terms or any Contract gives You any right to enforce or rely upon the Third Party Terms.
- 14.6 We do not guarantee:

- a) that We will be able to purchase Selected SEM Keywords or distribute Your SEM Paid Ads on any Third Party Site or Application. The purchase of SEM Keywords and the distribution of SEM Paid Ads on Third Party Sites or Applications is subject to Our discretion, to Our requests being accepted by the Third Party Search Engine Owners and to the discretion of the Third Party Search Engine Owners;
 - b) the position of Your SEM Paid Ads on Third Party Sites or Applications;
 - c) the cost per Click; or
 - d) that We will spend all of the Campaign Spend each month. Unless You are told otherwise, We will roll over any unused Campaign Spend to the following monthly period.
- 14.7 We may receive a benefit from Third Party Search Engine Owners under Our arrangements with them for placing and managing Selected SEM Keywords and SEM Paid Ads with them, which We are not obligated to pass on to You. You understand and consent to Us receiving such benefits.
- 14.8 The Price for a Clearly Digital SEM Product will include a management fee in addition to the cost of purchasing Clicks. A once-off, non-refundable set up fee may also apply, which is distinct from the management fee.
- 14.9 If We approve Your application to run international campaigns with a SEM Product, You are solely responsible for ensuring that Your international campaigns (including advertising copy and targeting) comply with applicable overseas Laws.
- 14.10 With eligible SEM Products (as notified by Us), We will provide Dynamic Website Tracking for an additional cost. If You use Dynamic Website Tracking, You agree to the following:
- a) We will apply Dynamic Website Tracking using a proxy server installed on a third party's network;
 - b) the link between Your Website and the proxy site may not remain functional for reasons outside Our control, including if You make changes to Your Website after We have set up Dynamic Website Tracking. You need to tell Us if You make any changes to Your Website (such as adding Flash content, images or adding e-commerce functionality); and
 - c) certain content (including Flash content, e-commerce functionality, images or secured site technology) on Your Website may not be suitable for Dynamic Website Tracking. As such, We do not guarantee that all content on Your Website will be replicated or replicated correctly on Dynamic Website Tracking.
- 14.11 If You have a Landing Page Product:
- (1) We will create the Landing Page as We see fit using Content relevant to You, including Content from Your Website;
 - (2) We will register a website domain relevant to Your Business. You agree to pay Us any fees associated with the domain registration or transfer. This website domain will not be transferred to You when Your Contract ends

15 Clearly Digital Website specific terms

- 15.1 We provide no guarantee or warranty that:
- a) a Clearly Digital designed website or mobile site will be available continuously or on an uninterrupted basis, secure, or not interfered with or adversely affected by factors or circumstances outside of Our control;
 - b) We will maintain a back-up of a Clearly Digital designed website or mobile site and Content contained on a Clearly Digital designed website or mobile site; or
 - c) the Clearly Digital designed website or mobile site We create for Our advertisers will each have a unique look and feel or contain unique content.
- 15.2 We may disable or suspend a Clearly Digital designed website or mobile site if You use Your Clearly Digital designed website or mobile site in a manner that generates excessive traffic or imposes excessive storage burdens on Us. We will use Our reasonable endeavours to give prior notice to You before We disable or suspend a Clearly Digital designed website or mobile site in accordance with this clause.
- 15.3 We may modify, upgrade, remove functionality from, or temporarily disable a Clearly Digital designed website or mobile site, including for maintenance purposes.
- 15.4 You must not use a Clearly Digital designed website or mobile site for publishing, displaying or linking to or from third party advertising feeds (whether or not for financial gain) or as a data storage facility.
- 15.5 Where needed to provide the Clearly Digital Product to You, You authorise Us to register, redirect or transfer a website domain or sub-domain relevant to You. This can include contacting an existing domain registrar on Your behalf. If requested, You must assist Us to register, redirect or transfer a website domain or sub-domain. You agree to pay Us any applicable fees and charges (as notified by Us). We may, refuse to register a sub-domain website if it will adversely affect the Products or Our brands. At the end of Your Contract, We will not transfer any website sub-domains to You but may transfer a website domain to You for a fee.
- 15.6 Subject to clause 15.7, We will notify You when the Clearly Digital website or mobile site that We prepare for You is ready for Your approval. Unless We tell You otherwise, if You do not approve and publish the Clearly Digital website or mobile site within 14 days of the date of that notice, We will automatically publish the Clearly Digital website or mobile site after that 14 day period and commence billing.
- 15.7 If You purchase a Clearly Digital mobile site only, You must arrange a domain re-direction for Clearly Digital mobile site (to Your existing website) in order for it to be published. The Clearly Digital mobile site You purchase cannot be published until You arrange this domain re-direction. If You do not complete the domain re-direction within 30 days of Our request for You to do so, We will commence billing for the Product after that 30 day period even if the site is not published.
- 15.8 If You purchase a Clearly Digital mobile site only and You have not arranged the domain re-direction within 6 months from the date We request You to do so, We will cancel the Product.

16 Clearly Digital – Digital Product specific terms

- 16.1 17.1 If You have a Clearly Digital Product, You agree to appoint Us to act as Your agent, if required, for the purposes of creating Your Third Party Site or Application Business Profiles for You and editing, modifying and managing Your Third Party Site or Application Business Profiles using Your Content. If You do not want Us to act as Your agent, You must provide written notice to Us specifying the situations where You would like Our appointment as Your agent to cease. You understand that We are under no obligation to create any Third Party Site or Application Business Profiles for You.
- 16.2 17.2 In order for Us to create, edit, modify and manage Third Party Site or Application Business Profiles, You understand that We may need to create accounts under Your name and using Your Personal Information on the Third Party Sites or Applications. You agree to Us using and disclosing Your Personal Information for this purpose. In addition, You understand that We may be required to accept Third Party Terms in order to set up accounts and create, edit, modify and manage Your Third Party Site or Application Business Profiles. If We accept Third Party Terms on Your behalf, You understand that You will be bound by the Third Party Terms.

17 Clearly Digital – Video Product specific terms

- 17.1 The Price for the Product may also include:
- a reschedule fee, if You reschedule a scheduled video shoot within 24 hours of the agreed time for the video shoot; and
 - an edit fee, if You request that the video is edited after You have approved the video, as set out in Your Contract.
- 17.2 If requested by Us, You must take any necessary steps or provide Us with any material required to finalise the Product within 4 months of the date of Your Contract. If You do not comply with Our request, We are not obliged to provide You with the Product You ordered and We may provide You with a different Product. Where this occurs You will not be entitled to any refund.
- 17.3 Where We permit You or another person to use the video, We are not liable for any loss, damage, claim or demand arising in respect of the use by You or another person.
- 17.4 Videos will be hosted on by third parties (such as YouTube) on the terms set by those parties. We have no control over third party hosting terms and are not affiliated with these third parties.

18 Performance Reports specific terms

- 18.1 The data, results and reports We generate may be used by Us and Our Related Bodies Corporate for promotion, marketing, advertising or any other purpose whatsoever. For the avoidance of doubt, this includes identifying You and the Products. Where We provide a report to You, We grant You a licence to use the reports for internal analytical purposes.
- 18.2 All other uses must be with Our prior written consent.
- 18.3 You acknowledge that:
- reports We provide may not contain live data or complete data for the reporting period; and
 - We make no guarantee that We will be able to report, or to report continuously or accurately, to You on the performance of the Products on Third Party Sites and Applications. Our ability to do so, depends on whether third parties provide information to Us and on the accuracy and timeliness of their information.

19 Social Media Product specific terms

- 19.1 The Social Media Product is a Product that involves Us promoting Your business via Social Media Platforms and that We designate as a "Social Media Product". The Social Media Product has a Minimum Period. You agree to do all things reasonably necessary to enable Us to provide to you the Social Media Product including:
- providing access to social media account/s held by You (including passwords and usernames) on the nominated social media platform/s;
 - granting permission to create new social media account/s and profile/s on the nominated social media platform/s under Your name and to accept third party terms on Your behalf in order to set up those accounts (and You understand that You will be bound by any third party terms that are accepted on Your behalf);
 - granting permission to edit and manage Your social media account/s on the nominated social media platform/s, including to make posts and create pages or channels, consistent with Your social media strategy;
 - providing Content to use in respect of Your social media profile/s on the nominated social media platform/s; and
 - cooperating with Our requests.
- 19.2 You must promptly inform Us if You become aware of any breach or suspected breach of security in relation to Your social media account/s on the nominated social media platform/s (such as loss, theft, or unauthorised disclosure or use of Your username or password). Until You notify Us of any breach of security, You will be liable for any unauthorised use of Your social media account/s on the nominated social media platform/s.
- 19.3 We may use data that appears in any monthly reports We provide to You for a variety of purposes, such as analytical and promotional purposes. Where We use this data in Our promotional activities, We may identify You and Your participation.

PART C. CANCELLATION POLICY FOR PRODUCTS

Product	Minimum Period	Cancellation Policy	Cancellation Fee and Refunds
Clearly Digital – Search Engine Marketing (SEM), Google Adwords, Search Engine Optimization (SEO), Social Media Products, Marketing management, design work	Minimum period as per stated in Order or as automatically renewed.	You may cancel the Contract for this Product by 60 days prior written notice and by payment of the cancellation fee (if applicable)	If your Contract is cancelled or terminated during the minimum Period, the cancellation fee is equal to: (monthly price x remaining number of months, in whole or part, in the Minimum period) plus GSTx0.5
Video Product	N/A	You may cancel the Contract for this Product by 60 days prior written notice and by payment of the cancellation fee (if applicable)	If you cancel the Contract for this product after the agreed time for the video shoot, or if You reschedule the video shoot multiple times resulting in cancellation of the Product, or if We terminate the Contract, a cancellation fee equal to the Price of the Product plus GST is payable. If you cancel the Product before the agreed time for the video shoot You must pay the administration fee set out in the Contract.
All other products not specifically referred to elsewhere in this table	N/A	You may cancel the Contract for this Product by 60 days prior written notice	If you cancel the Contract for this product after the agreed time for the video shoot, or if You reschedule the video shoot multiple times resulting in cancellation of the Product, or if We terminate the Contract, a cancellation fee equal to the Price of the Product plus GST is payable. If you cancel the Product before the agreed time for the video shoot You must pay the administration fee set out in the Contract.
Online products including Website design and hosting	Minimum period as per stated in order	You may cancel the Contract for this Product by 60 days prior written notice and by payment of the cancellation fee (if applicable)	<p>If a Contract is cancelled or terminated before the Product is made available to the public, the cancellation fee is equal to 80% of the GST – exclusive Price of the Product, plus GST.</p> <p>If a Contract is cancelled or terminated during the Minimum Period and after the Product is made available to the public, the cancellation fee is equal to the difference between:</p> <ul style="list-style-type: none"> - The GST – inclusive price of the product for 12 months; - and the amount paid by you for the Product before the date of cancellation or termination

PART D. INTERPRETATION

Campaign Spend means the proportion of the Price that We will use to purchase Selected SEM Keywords from Third Party Search Engine Owners for certain Clearly Digital SEM Products.

Click means when a person actively selects a SEM Sponsored Listing in the search results or any other location where the SEM Sponsored Listing is published and "clicks" on it.

SEM Product means the Products described as such in the Product rules, policies and guidelines for Clearly Digital SEM Products.

Content means any information (including Personal Information), advertisement, business name, trade name, trade mark, design, logo, photograph, illustration, graphic, artwork, text, URL (and content accessible via that URL), video, video link or other material.

Contract means the terms on which We supply any Products to You as detailed in clause 1.2.

Hyperlinked Site means an internet site accessed by a hyperlink from Content included in an Online Product or Clearly Digital SEM Product, and includes a Clearly Digital Webpage.

Law means all laws, regulations, rules and applicable industry codes of practice and standards.

Minimum Period means the minimum commitment that applies to a Product that We Supply to You, as set out in Part C and which commences on the date You sign the Contract, whether by written, electronic or voice processes, unless stated otherwise.

Mobile Product means Clearly Digital Mobile Product, and any other Products We designate as Mobile Products from time to time.

Online Product means a Clearly Digital Online Product, and any Product that We designate as an Online Product.

Order means the document (whether provided in printed or electronic format or via voice signature) setting out Your order and the details of the Product You purchase. If You are an advertising agency, Your Order includes any insertion order that You place with Us.

Personal Information means "Personal Information" as defined in the Privacy Act 1988 (Cth).

Price means the price or charges payable by You for a Product, as notified to You by Us from time to time, whether payable in full or in instalments.

Product means any advertising product that We offer from time to time on a paid or free Online or other properties.

Related Body Corporate means has the meaning it has in the Corporations Act 2001 (Cth).

Representative includes officers, employees or agents.

Selected SEM and SEO Keywords means:

- (a) all SEM and SEO Keywords that You have selected or that We have selected for You; and
- (b) all SEM Keywords that We map to Your SEM Paid Ads.

SEM Keyword means a word that, when present on a website or entered on a website by a person, causes a SEM Sponsored Listing to be displayed to the person.

SEM Paid Ads means a featured listing of Hyperlinked Site typically in the form of an advertisement comprising a title, a description of Your Advertised Products, and a hyperlink to Hyperlinked Site, which appears in a list of search results or is displayed when a person views a webpage containing relevant Selected SEM Keywords.

Clearly Digital SEM Product means any Product that We designate as a Clearly Digital SEM Product from time to time, and includes, SEM Products, SEO, Landing Pages Products.

Clearly Digital Webpage means a dedicated webpage hosted by Us or a Related Body Corporate that displays an advertisement and other information relating to Your business, including a Landing Page and a Minisite.

Third Party Terms means:

- a) the terms of Google Inc. and its related entities are set out on the webpage <https://adwords.google.com.au/select/sandcsfinder> (or such other webpage determined by Google Inc. and its related entities from time to time)
- b) the terms of other Third Party Search Engine Owners, to the extent they apply to any of Your Content displayed in Your Product;
- c) the terms of Third Party Sites or Application that We distribute Your Content to, that We link to, or that We otherwise integrate with a Product, from time to time which may include online media and social networking sites); and
- d) all policies, rules and guidelines referred to in the above terms.

Third Party Site or Application means a website or mobile site or application either in Australia or overseas, which is not maintained or controlled by Us or Our Related Bodies Corporate and includes: online media and social networking sites and applications; and websites on which, under Our authority or that of a Third Party Search Engine Owner, search results or SEM Paid Ads are made available.

Third Party Site or Application Business Profile means a profile (including a listing and information) relating to Your business on a Third Party Site or Application, which is available to be set up through a program on the Third Party Site or Application.

Third Party Search Engine Owner means Google, and any other Third Party Site Owner who We nominate as a Third Party Search Engine Owner from time to time.

Third Party Site or Application Owner means the owner of a Third Party Site or Application and includes a Third Party Search Engine Owner.

We, Us, Our refers to Clearly Digital (ABN – 54 650 874 153).

You, Your refers to the customer named on the front of the Order and includes any principal on whose behalf the customer acts.

Your Website means any website that We identify as used in connection with Your business, and does not need to be owned by You.